



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEP 06 2006

Cleta Mitchell, Esq.
Foley & Lardner LLP
Washington Harbour
3000 K Street, NW, Suite 500
Washington, DC 20007

RE: MUR 5587R
David Vitter for U.S. Senate

Dear Ms. Mitchell:

Based on a complaint filed with the Federal Election Commission on Oct. 27, 2004 and information supplied by your client, the Commission, on March 7, 2006, found that there was reason to believe that your clients, David Vitter for U.S. Senate and William Vanderbrook, in his official capacity as treasurer, ("the Committee"), violated 2 U.S.C. § 441d, and instituted an investigation.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that violations have occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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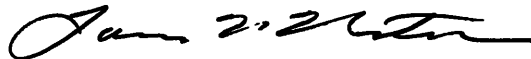
Cleta Mitchell, Esq.

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A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Alexandra Doumas, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Lawrence H. Norton
General Counsel

Enclosure
Brief

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of:

David Vitter for U.S. Senate and
William Vanderbrook in his official
capacity as treasurer

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MUR 5587R

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On March 7, 2006, the Commission found reason to believe that David Vitter for U.S. Senate and William Vanderbrook, in his official capacity as treasurer, ("the Committee") violated 2 U.S.C. § 441d of the Federal Election Campaign Act of 1971, as amended ("the Act"). The basis for that finding was information indicating that the Committee made disbursements for two sets of phone banks, but did not include a disclaimer on the calls. The Commission also authorized the Office of General Counsel to obtain discovery from and enter into pre-probable cause conciliation with the Committee, which then provided a response to the Commission's reason to believe findings, a response to an informal request for information, and an affidavit. Based on the information before the Commission, we are prepared to recommend that the Commission find probable cause to believe that the Committee violated 2 U.S.C. § 441d.

II. STATEMENT OF FACTS

The Committee hired a polling and voter identification company to conduct telephone polling on behalf of the Committee. Two such polls are at issue in this matter. One poll consisted of advocacy and voter identification calls. At the beginning of each call, the callers

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informed the recipient that s/he was "working with the David Vitter for U.S. Senate Campaign." The caller then explained, "I have decided to work to elect David Vitter because he has worked hard to bring good jobs to Louisiana[,] . . . has a concrete record of fighting political corruption [a]nd fully supports the Bush tax cuts;" asked the recipient of the call if "David Vitter [can] count on your vote on election day;" and asked what issue the recipient considered to be the most important issue facing our nation today. The caller ended by stating, "Thank you for your time and we really do hope you will consider David Vitter for U.S. Senate when you go to vote." The caller never stated that the Committee paid for the calls.

A second group of calls are referred to as the "Undecided" poll calls. It appears that the recipients of these second calls were individuals who indicated in the first set of calls that they had not decided for whom they intended to vote. In the "Undecided" poll calls, the caller stated that they were from "PJB Media Research," which was a d/b/a name of the company hired to make the calls. The callers simply asked the recipient, "In the U.S. Senate Race (sic) in November are you more likely to vote for:" and then listed the names of the candidates, including David Vitter. The callers were instructed to rotate the order they read the candidates' names when making the calls.

Information provided by the Committee indicates that more than 500 calls were made within a thirty (30) day period, that the Committee spent approximately \$228,000 on the first set of calls (approximately 400,000 calls at \$.57 per call), and that the Committee spent approximately \$51,300 on the second set of calls (approximately 90,000 calls at \$.57 per call). Therefore, it appears that the Committee spent a total of \$279,300 on both sets of calls.

III. LEGAL ANALYSIS

The Act requires that political committees "making a disbursement for the purpose of financing any communication . . . through any other type of general public political advertising"

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must place a disclaimer in the communication. 2 U.S.C. § 441d. Furthermore, the regulations state that any "public communication" for which a political committee makes a disbursement must contain a disclaimer. 11 C.F.R. § 110.11.

A public communication includes a communication by telephone bank to the general public. 11 C.F.R. § 100.26. A telephone bank means that more than 500 calls of an identical or substantially similar nature were made within a 30-day period. 11 C.F.R. § 100.28. The Explanation and Justification discussing the disclaimer regulations implementing the 2002 Bipartisan Campaign Reform Act ("BCRA") amendments to the Federal Election Campaign Act of 1971, as amended ("the Act"), also make clear that a telephone bank is considered a type of general public political advertising. *See* 67 Fed. Reg. 76962, 76963 (Dec. 13, 2002) ("each form of communication specifically listed in the definition of 'public communication,' as well as each form of communication listed with reference to a 'communication' in 2 U.S.C. 441d(a), must be a form of 'general public political advertising.'"). Therefore, any candidate, political committee or their agent(s) making any disbursement for telephone bank calls must include a disclaimer on the calls.

The disclaimer must be presented in a "clear and conspicuous manner" in order to give the listener "adequate notice of the identity of the person or political committee that paid for and, where required, that authorized the communication." 11 C.F.R. § 110.11(c)(1). A disclaimer, if paid for and authorized by a candidate or an authorized committee of a candidate, must clearly state that the communication has been paid for by the authorized political committee. 11 C.F.R. § 110.11(b)(1).

In sum, disclaimers are required on any telephone bank communications, as defined by Commission regulations, for which a political committee makes a disbursement. The Committee

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paid for both sets of calls. In the first set of calls, the caller simply stated s/he was "working with" the Committee, but did not state that the Committee paid for the calls. As such, those calls did not comply with the disclaimer provisions of the regulations and the Act. The second set of calls did not contain any disclaimer at all. Therefore, those calls also violated the disclaimer provisions of the regulations and the Act.

Accordingly, we are prepared to recommend that the Commission find probable cause to believe that the Committee violated 2 U.S.C. § 441d.

IV. GENERAL COUNSEL'S RECOMMENDATIONS

1. Find probable cause to believe that David Vitter for U.S. Senate and William Vanderbrook in his official capacity as treasurer violated 2 U.S.C. § 441d.
2. Approve the appropriate letter.

7/6/06

Date

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